

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEBRA L. HUNTER-ELKO,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
 Commissioner of Social Security,

Defendant.

Case No.: 2:09-cv-01933-GMN-LRL

ORDER

This case arises out of the Social Security Administration's denial of benefits to Plaintiff. (See Compl. ¶ 1). On June 11, 2010, the Court granted the parties' stipulation for remand and for entry of judgment. (See #16). Pending before the Court is Plaintiff's motion for extension of time to petition the Court for attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, and to stay time to file for attorney's fees under the Social Security Act, 42 U.S.C. § 406(b), until receipt of the Notice of Award.

Local Rule 54-16 gives parties fourteen days from entry of judgment to petition the Court for attorney's fees. Plaintiff seeks relief from the local rule because EAJA gives plaintiffs thirty days after judgment to petition for attorney's fees, *see* 28 U.S.C. § 2412(d)(1)(B), and the thirty-day clock does not begin to run until sixty days after a court enters a remand order, because the government has sixty days to appeal such an order, *see* Fed. R. App. P. 4(a)(1)(B). *See Melkonyan v. Sullivan*, 111 S. Ct. 2157, 2162, 2165 (1991). In this case, however, the


1 government has stipulated to the remand order, so it cannot appeal it. The sixty-day period to
2 appeal is therefore irrelevant to the calculation, and the thirty-day clock began to run on June 11,
3 2010 when the Court entered judgment. Plaintiff has until July 11, 2010 to petition for attorney's
4 fees under EAJA.

5 Next, Plaintiff argues for a "stay" as to attorney's fees under 42 U.S.C. § 406(b) until a
6 "close out" letter is issued by Defendant after the administrative hearings on remand, because
7 she cannot apply for such fees unless and until she prevails in the proceedings. The present
8 motion is unripe in this regard. The Court has not rendered, and perhaps will not have occasion
9 to render, a favorable judgment to Plaintiff as to her claimed past-due benefits. The Court has
10 rendered a favorable stipulated remand order requiring a rehearing under certain standards, but it
11 has not entered any judgment for past-due benefits. Therefore, although Plaintiff is already
12 entitled (potentially) to attorney's fees under EAJA for the costs of prosecuting her case to the
13 present stage in this Court, see 28 U.S.C. § 2412, she is not yet even potentially entitled to
14 attorney's fees under 42 U.S.C. § 406(b), because no court has rendered a favorable judgment on
15 the merits of her claims for past-due benefits. After Defendant rules on remand, and if the case
16 is then appealed to this Court, and if this Court then rules for Plaintiff on the merits, Plaintiff
17 may apply for attorney's fees under § 406(b).

18 CONCLUSION

19 IT IS HEREBY ORDERED that the Motion (#18) is GRANTED in part and DENIED in
20 part, as explained above.

21 DATED: This 19th day of July, 2010.

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23 
24 GLORIA M. NAVARRO
UNITED STATES DISTRICT JUDGE